FINAL REGULATIONS IMPLEMENTING THE MASSACHUSETTS MERCURY MANAGEMENT ACT (Chapter 190 of the Acts of 2006)

310 CMR 70.00: ENVIRONMENTAL RESULTS PROGRAM CERTIFICATION

70.01: Purpose and Authority

(1) The purpose of 310 CMR 70.00 is to provide for the protection of public health, safety, welfare and the environment by requiring ERP facilities or units to submit a performance based compliance certification to the Department.

(2) 310 CMR 70.00 is promulgated pursuant to the authority of M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act), c. 21A, §§ 2, 13 and 16, c. 21C (the Hazardous Waste Management Act), c.21H, §§ 6A-6N (the Mercury Management Act), c. 111, §§ 142A through 142M (the Massachusetts Clean Air Act) and c. 111 § 150A (the Solid Waste Management Act).

70.02: Definitions

The definitions found in 310 CMR 70.02 are for use only in the compliance certification requirements contained in 310 CMR 70.00 and are not intended to replace the definitions of those terms in the underlying standards.

Certification means the certification form as prescribed by the Department pursuant to 310 CMR 70.03(2), which includes the certification statement requirements pursuant to 310 CMR 70.03(2).

Department means the Massachusetts Department of Environmental Protection.

Environmental Results Program (ERP) facility or unit means one of the following:

(a) a dry cleaner subject to 310 CMR 7.26(10) through (16);
(b) a photo processor subject to 310 CMR 71.00;
(c) a printer as defined in 310 CMR 7.26(22);
(d) a boiler subject to 310 CMR 7.26(30) through (37);
(e) an engine or combustion turbine subject to 310 CMR 7.26(40) through (44);
(f) a dental facility subject to 310 CMR 73.00;
(g) an industrial user subject to 314 CMR 7.05(2)(g);
(h) a new sewer extension of less than 1,000 feet in length subject to 314 CMR 7.05(1)(c);
(i) a new sewer connection or any increase in flow to an existing sewer connection subject to 314 CMR 7.05(1)(h);
(j) an industrial wastewater holding tank subject to 314 CMR 18.00;
(k) a scrap recycling facility, vehicle recycler or vehicle manufacturer subject to 310 CMR 74.00;

(l) a manufacturer of a mercury-added product subject to 310 CMR 75.00; or
(m) a manufacturer of mercury-added lamps subject to 310 CMR 75.00.

ERP Sector means all ERP facilities or units of one type.

Operator means the person responsible for the over-all operation of an ERP facility or unit.

Owner means any person who has legal or equitable ownership, alone or with others, of an ERP facility or unit, including, but not limited to, any agent, executor, administrator, trustee, lessee, or guardian of the estate for the holder of legal title.

Person means any individual, partnership, corporation, syndicate, company, firm, association, authority, department, bureau, trust or group including, but not limited to, a city, town, county, the Commonwealth and its agencies, and the federal government.

Responsible Official is one of the following:
(a) For a corporation: a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized pursuant to a corporate vote, or a representative of the corporation who has been duly authorized pursuant to a corporate vote provided the representative is responsible for the overall operation of the facility or unit; or
(b) For a partnership: a general partner with the authority to bind the partnership or the proprietor, respectively; or
(c) For a sole proprietorship; the sole proprietor; or
(d) For a municipality, state, federal, or other public agency including any legislatively-created authority, board, commission, district, *etc*.: either a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

Standards means those requirements listed in the certification form referred to in 310 CMR 70.03(2), including but not limited to 310 CMR 7.00, 310 CMR 30.00, 310 CMR 71.00, 310 CMR 72.00, 310 CMR 73.00, 310 CMR 74.00, 310 CMR 75.00, 314 CMR 3.00, 314 CMR 5.00, or 314 CMR 12.00, requirements contained in NESHAP's (40 CFR Part 61 Subparts, and Part 63) or NSPS's (40 CFR Part 60 Subparts) that have been delegated to Massachusetts, and the terms and conditions of any permits issued pursuant to any of those regulations.

70.03: Compliance Certification Requirements

(1) Schedule for Submission of Compliance Certification .

(a) The owner or operator of each ERP facility or unit shall submit a certification in accordance with 310 CMR 70.03(2) and thereafter shall submit, as applicable, a periodic compliance certification in accordance with the schedule set forth herein for the specific type of ERP facility or unit.

(b) The owner or operator of each ERP facility or unit shall submit a compliance certification in accordance with 310 CMR 70.03(1) and (2) within 60 days of:

1. the commencement of operation of a new ERP facility or unit; except for boiler(s) subject to 310 CMR 7.26(30) that must submit a certification in accordance with the schedule in 310 CMR 7.26(32);
2. the recommencement of operation of an ERP facility or unit for which no certification was submitted during the year prior to recommencement; except for boiler(s) subject to 310 CMR 7.26(30) that must submit a certification in accordance with the schedule in 310 CMR 7.02(3)(m), or
3. acquiring an ERP facility or unit unless exempted from this requirement pursuant to 314 CMR 7.17(1)(b).

(c) If a periodic compliance certification is required, then the owner or operator of the ERP facility or unit shall submit the compliance certification by the end of each certification period unless a statement of non-applicability is submitted to the Department on a form prescribed by the Department.

(d) Notwithstanding 310 CMR 70.03(1)(a) and (b), a photo processor holding a permit from the Massachusetts Water Resources Authority pursuant to 360 CMR 10.000 is deemed to hold the equivalent of an ERP certification and is not required to file a periodic compliance certification pursuant to 310 CMR 70.00 and 71.00, but such a photo processor is required to pay an annual compliance fee to the Department pursuant to 310 CMR 4.00.

(e) A photo processor which is located in the service area of the Massachusetts Water Resources Authority and which hauls or ships photo processing waste off-site is required to file periodic compliance certifications pursuant to 310 CMR 70.00 and 71.00.

(f) Owners or operators of the following types of ERP facilities or units shall submit a periodic compliance certification to the Department by September 15th of each year except as provided in 310 CMR 70.03(h):

1. dry cleaners subject to 310 CMR 7.26(10) through (16);
2. photo processors subject to 310 CMR 71.00; and
3. printers subject to 310 CMR 7.26(20) through (29).

(g) The owner or operator of the following types of ERP facilities or units shall submit a periodic or one-time compliance certification in accordance with the following schedules:

1. The owner or operator of a facility with boilers subject to 310 CMR 7.26(30) shall submit a one-time certification in accordance with the schedule set forth in 310 CMR 7.26(32).
2. The owner or operator of an industrial wastewater holding tank shall submit to the Department a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 18.11.
3. The owner or operator of a dental facility subject to 310 CMR 73.00 shall submit a certification in accordance with the schedule and conditions referenced in 310 CMR 73.07.
4. An industrial user subject to 314 CMR 7.05(2)(g) and discharging to a non-IPP POTW, as defined in 314 CMR 7.00, shall submit a certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(2).
5. The initial owner or operator of a new sewer extension of 1,000 feet or less in length subject to 314 CMR 7.05(1)(c) shall submit a one-time

certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(1).

6. An owner or operator of a new sewer connection subject to 314 CMR 7.05(1)(h) shall submit a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(1).

7. An owner or operator of an existing sewer connection with an increase in flow subject to 314 CMR 7.05(1)(h), shall submit a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(1).

8. An owner or operator of an engine or combustion turbine subject to 310 CMR 7.26(40) through (44) shall submit a certification in accordance with the schedule and conditions set forth in 310 CMR 7.26.

9. Scrap recycling facilities, vehicle recyclers and vehicle manufacturers subject to 310 CMR 74.00 shall submit certification forms in compliance with the applicable schedules and conditions established in 310 CMR 74.09.

10. Manufacturers of mercury-added products and lamps subject to 310 CMR 75.00 shall submit certification forms in compliance with the applicable schedules and conditions established in 310 CMR 75.04 and 310 CMR 75.05.

(h) The Department may determine a schedule, less frequently than the schedule in 310 CMR 70.03(1)(f), for submission of periodic compliance certifications, based on the following criteria:

1. the size, composition and activities of the ERP sector;
2. the quantity and types of (toxic) materials used and potential wastes, emissions and discharges of the ERP sector;
3. the degree of compliance with established regulatory requirements by the ERP sector;
4. the degree of control over the environmental and public health aspects of activities by the ERP sector; and
5. any other relevant information regarding the environmental consequences of the periodic compliance certifications and return to compliance response rates and results within the ERP sector.

The Department will notify the public and affected businesses by publishing a notice in the Massachusetts Environmental Policy Act Monitor and may also notify an ERP sector through industry trade associations, the Department's website and other appropriate cost-effective methods of changes in the ERP sector's certification schedule.

(2) Certification Statement. The Responsible Official for each ERP facility or unit shall submit a compliance certification. Each compliance certification shall be on a form prescribed by the Department and shall address compliance with standards to which the ERP facility or unit is subject. The certification form may include specialized forms for specific categories of ERP facilities or units, and any owner/operator required to submit a certification pursuant to 310 CMR 70.03 shall submit all applicable forms. The compliance certification shall:

(a) state whether the ERP facility or unit is in compliance with the applicable standards as listed on the certification form;

(b) identify any violations that occurred and the date of such violations within the certification period prior to the due date of the certification statement including, but not limited to, any notifications required pursuant to MGL c. 21E, § 7 and 310 CMR 40.0300 (releases and threats of release of oil and/or hazardous material), and any reporting of violations required pursuant to 310 CMR 7.02(6) (air pollution control equipment failures), 314 CMR 12.03(8) (emergency bypasses to sewer treatment works), 310 CMR 30.520 (hazardous waste contingency plans) and the terms and conditions of any permits issued by the Department; and
(c) state what the owner/operator will do to return to compliance and the date by which compliance will be achieved; and
(d) include the following statement: "I, [name of responsible official], attest under the pains and penalties of perjury:

1. that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
2. that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
3. that systems to maintain compliance are in place at the facility or unit and will be maintained even if processes or operating procedures are changed; and
4. that I am fully authorized to make this attestation on behalf of this facility or unit. I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

70.04: Violations of 310 CMR 70.00

(1) It shall be a violation of 310 CMR 70.00 for any person to:

(a) fail to submit a timely certification pursuant to 310 CMR 70.03;
(b) make any false, inaccurate, incomplete, or misleading statements in any certification required pursuant to 310 CMR 70.03;
(c) make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to the applicable standards;
(d) hold themselves out as a responsible official in violation of the requirements contained in 310 CMR 70.03;
(e) fail to comply with the applicable standards; or
(f) violate any other provision of 310 CMR 70.00.

(2) The Department reserves the right to exercise the full extent of its legal authority, pursuant to M.G.L. c. 21 §§ 26 through 53 (Massachusetts Clean Waters Act), c. 21A §§ 2, 8, 13 and 16, c.21C (Hazardous Waste Management Act), c.21H, §§ 6A-6N (the Mercury Management Act), c. 21H, §8, c. 111 §§ 142A through 142M (Massachusetts Clean Air Act), and c. 111, § 150A (Solid Waste Management Act), in order to obtain full compliance

with all requirements applicable to ERP facilities and units, including but not limited to, criminal prosecution, fines, civil and administrative penalties, and orders.

REGULATORY AUTHORITY
310 CMR 70.00: M.G.L. c. 21, §§ 26 through 53; c. 21A, §§ 2, 13 and 16; c. 21C, c.21H, §§ 6A-6N, (the Mercury Management Act), and c. 111, §§ 142A through 142M and 150A.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 74.00: REMOVAL AND RECYCLING OF MERCURY-ADDED COMPONENTS IN VEHICLES

74.01: Purpose and Authority

The purpose of 310 CMR 74.00 is to protect public health, safety, welfare and the environment by implementing the Mercury Management Act (chapter 190 of the Acts of 2006). These regulations prohibit the sale of mercury-added vehicle switches, establish requirements for the removal of mercury-added vehicle switches and other components that contain mercury before a vehicle is crushed or shredded and require a performance-based compliance certification in compliance with 310 CMR 70.00.

310 CMR 74.00 is promulgated pursuant to the authority of M.G.L. c. 21C, §§ 4 and 6, and c. 21H, §§ 6C and 6N.

74.02: Definitions

The definitions found in 310 CMR 74.02 apply and are limited to 310 CMR 74.00.

Automobile dealer or vehicle dealer means any person who, in the ordinary course of his business, is engaged in the business of selling motor vehicles to consumers or other end users pursuant to a franchise agreement and who is required to obtain a class 1 or class 2 license pursuant to the provisions of M.G.L. c. 140, §§ 58 and 59.

Automobile manufacturer or vehicle manufacturer means any person, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture which is last in the production or assembly process of a new vehicle that uses mercury-added components, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle; however, if a company from whom an importer or domestic distributor purchases the merchandise has a U.S. presence or assets, that company shall be considered to be the manufacturer and the distributor as defined in MGL c. 93B shall not be considered to be the manufacturer.

Department means the Massachusetts Department of Environmental Protection.

End-of-life vehicle means any vehicle, which is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of dismantling, recycling or disposal.

Mercury-added component means a component that contains mercury, including but not limited to a mercury-added vehicle switch, mercury high intensity discharge (HID) headlamp, or fluorescent lamps.

Mercury-added vehicle switch means a mercury-added component installed in a motor vehicle that opens or closes an electrical circuit or gas valve, including, but not limited to, those used in light switches and antilock braking systems.

Motor vehicle (*See* "Vehicle").

Person means any natural or corporate person, whether public or private, including corporations, societies, associations and partnerships and bodies politic and corporate, public agencies, authorities, departments, offices and political subdivisions of the Commonwealth of Massachusetts.

Scrap recycling facility means a facility, location, device or unit, including, but not limited to, scrap recyclers and vehicle shredders, where machinery and equipment are used for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steel or nonferrous metallic scrap for sale for remelting purposes.

Vehicle or motor vehicle means a vehicle propelled by an internal combustion engine or an electric motor, such as an automobile, van, truck, motorized construction equipment, motorized recreational vehicle, motorcycle or forklift.

Vehicle in commerce means any vehicle offered for sale by a vehicle dealer, or duly registered in Massachusetts or in the United States to be operated on public roads and highways.

Vehicle recycler means any individual or entity engaged in the business of acquiring, dismantling, crushing (including partial crushing) or destroying six (6) or more vehicles in a calendar year for the primary purpose of reselling their parts. For the purposes of this definition, an individual or entity owning or operating a mobile or stationary crushing unit is considered a vehicle recycler.

74.03: Applicability

(1) 310 CMR 74.00 is applicable to automobile dealers, automobile manufacturers, scrap recycling facilities that accept end-of-life vehicles, and vehicle recyclers.

(2) Compliance with 310 CMR 74.00 does not release an automobile dealer, automobile manufacturer, scrap recycling facility, or vehicle recycler from the need to comply with other applicable state, federal and local requirements.

(3) Certification Form. Each certification required by 310 CMR 70.03 shall be on a form prescribed by the Department and shall address compliance with the standards established by 310 CMR 70.00 and 74.00. The certification form may also address compliance with other applicable standards promulgated by the Department.

74.04: Requirements for the Removal of Mercury-added Components Before Crushing

(1) No person shall crush, cause to be crushed or otherwise arrange for an end-of-life vehicle to be crushed without first having removed any mercury-added components, including but not limited to, mercury-added vehicle switches.

(2) 310 CMR 74.04 (1) shall not apply to:

(a) mercury-added components made inaccessible due to significant damage to the vehicle in the area surrounding the component's location, or

(b) mercury added lamps used to backlight the vehicle's dashboard and other electronic devices (due to the inaccessibility of these lamps and the resulting potential for mercury to be released to the environment if a lamp is broken while it is being removed).

(3) A vehicle recycler shall, before delivering or selling vehicle bodies to scrap recycling facilities, certify in writing to the scrap recycling facility, in a form approved by the department, that all mercury-added vehicle switches have been removed from the vehicle bodies in the shipment.

(a) Such certification shall be provided on a bill of lading, on stickers affixed to the vehicle bodies, or in another manner approved by the Department.

(b) Certifications provided on a bill of lading shall contain:

1. A statement that: "I certify that mercury-added switches have been removed from the vehicles in this shipment in compliance with 310 CMR 74.04."; and
2. The signature of the corporate official making the certification (which may be preprinted or signed for each bill of lading) and the typed or printed name of such corporate official and his or her title.

(c) Certification provided on stickers affixed to the vehicle bodies shall contain:

3. A statement that: "Mercury-added switches have been removed from this vehicle in compliance with 310 CMR 74.04."; and
4. The signature of the corporate official making the certification (which may be preprinted or signed in "permanent" ink) and the typed or printed name of such corporate official and his or her title.

(d) Written certification may be provided in another manner, if a proposal is submitted to the Department and approved prior to use.

(4) A scrap recycling facility may agree to accept an end-of-life vehicle containing mercury-added components that has not been flattened, crushed or baled provided that the scrap recycling facility removes the mercury added components.

(5) Any person removing a mercury-added component from a vehicle shall manage the component in accordance with the provisions of 310 CMR 30.000, either as a hazardous waste or a universal waste, except for mercury-added components that are not switches (e.g. high intensity discharge (HID) lamps) and that are still in commerce.

74.05: Prohibition on the Sale of Mercury-added Switches in Vehicles

(1) No person shall sell, offer to sell or distribute a vehicle manufactured on or after January 1, 2007, containing mercury-added vehicle switches;

(2) No person shall sell or offer to sell or distribute a mercury-added vehicle switch for new installation in a vehicle;

(3) If a mercury-added switch in a vehicle in commerce requires replacement, it shall be replaced with a non-mercury alternative, if such an alternative is commercially available. If the mercury-added vehicle switch requiring replacement is a component of an anti-lock braking system or an airbag, replacement with a non-mercury alternative shall not be required. The commercial availability of a non-mercury vehicle switch for a particular vehicle may be determined by consulting information published (electronically on internet web pages and on paper) by the Department, vehicle manufacturers and/or their trade associations, and the automotive industry trade press.

74.06: Plans for Proper Removal, Recovery, and Recycling of Mercury-added Switches from End-of-Life Vehicles

(1) No later than April 30, 2008, every vehicle manufacturer shall, individually or as a group, or through a trade association, develop, file with the department, and commence implementing a plan for the removal, recycling, transportation, storage, and containment of mercury-added switches from end-of-life vehicles in accordance with the regulations at 310 CMR 30.000 as either a hazardous waste or universal waste. Such plans shall, to the extent practicable, use the existing end-of-life vehicle recycling infrastructure, and shall:

(a) include a method for collecting and transporting switches after they are removed from vehicles;
(b) identify or establish and use facilities where switches may be received and accepted;
(c) ensure that the mercury from all recovered switches is recycled in accordance with 310 CMR 30.000; and
(d) provide information, training, technical assistance to vehicle recyclers, scrap recyclers and all other persons involved in removing mercury-added vehicle switches from motor vehicles;
(e) include a program which is designed to achieve a mercury-added vehicle switch capture rate of at least 90%, based on the capture rate described in 310 CMR 74.07;

(f) describe the financing system through which the total cost of removal, collection, record keeping and recovery of mercury-added vehicle switches shall be borne by the vehicle manufacturer. Such financing system shall include, but not be limited to, a payment of $3 for every mercury-added vehicle switch removed by a vehicle recycler or scrap recycling facility; and

(g) describe any reasons for not using the existing end-of-life vehicle recycling infrastructure.

(2) The plan described in 310 CMR 74.06(1) shall not be required from:

(a) a vehicle manufacturer that is participating in a plan being implemented in accordance with the requirements of MGL c. 21H, §6C(n), where such plan is demonstrated to achieve a capture rate that complies with the requirements of 310 CMR 74.07. In the event that a plan fails to achieve the specified capture rate in any year, as determined by the Department, the vehicle manufacturer shall submit to the Department within thirty days of such determination a plan that meets the requirements of 310 CMR 74.06(1); or

(b) a vehicle manufacturer that never installed mercury-added vehicle switches in its vehicles. To qualify for this exemption, such manufacturer shall submit a one-time certification of non-applicability in compliance with the requirements of 310 CMR 74.09(1)(c) to the Department by April 30, 2008.

(3) Nothing in this section shall prohibit a vehicle manufacturer from substituting a new plan in accordance with, and subject to, the requirements of 310 CMR 74.06(4).

(4) If a vehicle manufacturer's plan under 310 CMR 74.06(1) has been in effect for at least one year, the manufacturer may submit an alternate plan to the Department for approval. The alternate plan shall meet the following criteria:

(a) The alternate plan has been in effect for at least one year in another state and can be implemented statewide;

(b) The alternate plan has achieved at least a 90 per cent capture rate in that state; and

(c) The alternate plan, to the extent practicable, uses the existing end-of-life vehicle recycling infrastructure in Massachusetts**.**

(5) When considering whether to approve an alternate plan pursuant to 310 CMR 74.06(4), the Department shall take into consideration the environmental impact in Massachusetts and the economic impact on Massachusetts businesses. To do so, the Department shall seek public comment on any plan submitted pursuant to 310 CMR 74.06 (4).

(a) The Department shall publish a legal notice in Massachusetts newspapers of general circulation which includes a summary of the plan and contact information on how and where to submit comments;

(b) The Department shall notify Massachusetts vehicle recyclers and scrap recycling facilities in writing of the plan and public comment opportunity;

(c) The public comment period shall be no less than 21 calendar days.

(6) Approval of the alternate plan pursuant to 310 CMR 74.06(4) by the Department shall release the vehicle manufacturer from the obligations of its original plan, pursuant to 310 CMR 74.06(1), starting on the effective date of the alternate plan. Upon receipt of approval of an alternate plan, the vehicle manufacturer must notify all vehicle recyclers and scrap recycling facilities of the approval, the plan's provisions and its effective date.

(7) An alternate plan may include an agreement between automobile manufacturers and automobile dealers to remove switches before the vehicle reaches its end-of-life.

74.07: Measuring Recycling of Mercury-added Vehicle Switches

(1) The success of any plan designed to remove, collect, and recover mercury-added switches from end-of-life vehicles that is implemented in compliance with M.G.L. c. 21H, §6C shall be measured by a capture rate that compares the actual number of mercury vehicle switches recovered and transported to authorized recycling facilities in each calendar year to the total number of mercury-added vehicle switches estimated to be available for removal from end-of-life vehicles in Massachusetts in that calendar year.

(2) The vehicle manufacturer shall calculate the capture rate for each calendar year in which a plan established pursuant to 310 CMR 74.06 is implemented, and shall report that rate to the Department in compliance with the requirements of 310 CMR 74.09(1)(b).

(3) Determining Compliance with the 2007 Target Capture Rate for Alternative Plans Submitted Pursuant to c. 21H, Section 6C(n):

(a) For calendar year 2007, the target capture rate shall be 50% of 92,500 mercury-added vehicle switches estimated to be available for collection (or 46,250 switches).
(b) Plans that achieve the target capture rate of 50% by December 31, 2007, as determined by the Department, shall be deemed to be in compliance. Plans that do not achieve this target capture rate by December 31, 2007 shall be deemed to be not in compliance, and their proponents shall comply with the provisions of 310 CMR 74.06 as applicable.

(4) Determining Compliance with the Target Capture Rate for all Plans in 2008 and Subsequent Years.

(a) Plans that achieve a capture rate of 90% by December 31, 2008 and in each subsequent year, as determined by the Department, shall be deemed to be in compliance. Plans that do not achieve this capture rate by December 31, 2008 or by December 31 in any subsequent year shall be deemed to be not in compliance, and their proponents shall comply with the provisions of 310 CMR 74.06 as applicable.

74.08: Recordkeeping

(1) Parties subject to 310 CMR 74.00 shall keep records on-site for 5 years that demonstrate compliance with this section, and the supporting information that the facility relied upon to file the certification(s) required by 310 CMR 74.00, and may be required to

submit said records upon request of the Department.

74.09: Submittal of Compliance Certifications and Reports to the Department

(1) The following certifications shall be submitted to the Department pursuant to 310 CMR 70.03(1)(g)9:

(a) Scrap recycling facilities and vehicle recyclers subject to 310 CMR 74.00 shall submit to the Department a compliance certification by March 1 of each year. The certification shall be on a form prescribed by the Department, and shall address compliance with the requirements of 310 CMR 74.00 during the previous calendar year (ending December 31). The certification shall contain the following information, at a minimum:

1. Certification that all mercury-added components required to be removed pursuant to 310 CMR 74.00 were removed from vehicles during the calendar year covered, and will continue to be removed during the coming year;
2. Certification that removed mercury-added components have been managed in accordance with the requirements of 310 CMR 74.00;
3. The number of mercury-added vehicle switches removed and shipped off-site for recycling; and
4. (for vehicle recyclers) Certification that the vehicle recycler has provided the certification required by 310 CMR 74. 04(3) to the scrap recycling facility(ies) to which it shipped vehicle bodies during the period covered by the certification.

(b) No later than March 1, 2008, and March 1 of each subsequent year, each automobile manufacturer shall certify to the Department, in writing on a form prescribed by the Department, that it is implementing the collection and recycling plan in accordance with 310 CMR 74.06. Such certification shall meet the requirements of 310 CMR 70.03, and shall include but not be limited to the following:

1. the number of mercury-added vehicle switches collected and recycled during the previous calendar year;
2. The actual capture rate achieved during the calendar year covered by the certification, pursuant to 310 CMR 74. 07(2); and
3. where and how the switches were stored, recycled or otherwise disposed of.

(c) By April 30, 2008, any vehicle manufacturer that never installed mercury-added vehicle switches shall submit a non-applicability certification to the Department, pursuant to 310 CMR 74.06 (2) (b), on a form prescribed by the Department.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 75.00: Collection and Recycling of Mercury-Added Products

75.01: Purpose and Authority

(1) The purpose of 310 CMR 75.00 is to protect public health, safety, welfare and the environment by implementing the Mercury Management Act (Chapter 190 of the Acts of 2006). These regulations prohibit the sale of mercury-added products in Massachusetts unless the manufacturer of the product creates, files with the Department, and implements a convenient and accessible collection plan for mercury-added products at the end-of-life, including a system for the direct return of the mercury-added product to the manufacturer or a collection and recycling plan, in accordance with MGL c. 21C and 310 CMR 30.000, using new or existing collection systems. This section establishes performance standards and other requirements for collection and recycling plans, and requires a performance-based compliance certification in accordance with 310 CMR 70.00.

(2) 310 CMR 75.00 is promulgated pursuant to the authority of M.G.L. c. 21C, §§ 4 and 6, M.G.L. c. 21H, §§ 6J and 6N.

75.02: Definitions

The definitions found in 310 CMR 75.02 apply and are limited to 310 CMR 75.00.

Distributor means any person who imports, consigns, or offers for sale, sells, barters or otherwise supplies mercury-added products in the commonwealth.

Manufacturer means any person, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture which produces a product containing mercury or an importer or domestic distributor of a product containing mercury produced in a foreign country. In the case of a mercury-added multi-component product where the only mercury is contained in a mercury-added component manufactured by a different manufacturer which is intended to be readily removable and replaceable by the consumer or user, the manufacturer is the manufacturer who produced the mercury-added component. If the product or component is produced in a foreign country, the manufacturer is the importer or domestic distributor. However, if a company from whom an importer purchases the merchandise has a United States presence or assets, that company shall be considered to be the manufacturer. This definition shall not apply to a "distributor" of motor vehicles as defined in section 1 of chapter 93B.

Mercury-added component means a component that contains mercury.

Mercury-added product means a product to which the manufacturer intentionally introduces mercury, including, but not limited to, electric lamps, thermostats, automotive devices, electric switches, medical or scientific instruments, electric relays or other electrical devices, but not including products made with coal ash or other products that are incorporated into equipment used to manufacture semiconductor devices, elemental mercury in pre-capsulated form that is sold, distributed or provided to a dental practitioner for use in compliance with the department's regulations concerning amalgam wastewater and recycling for dental facilities, or mercury-added formulated products. This term includes mercury-added components that are incorporated into larger products.

Mercury-added lamp means an electric lamp to which the manufacturer intentionally introduces mercury for the operation of the lamp, including, but not limited to, fluorescents, compact fluorescents, black lights, high intensity discharge lamps, ultraviolet lamps and neon lamps.

Mercury-added formulated product means a chemical product to which mercury has been added, intentionally or unintentionally, including, but not limited to, laboratory chemicals, cleaning products, cosmetics, pharmaceuticals and coating materials that are sold as consistent mixtures of chemicals.

Person means any natural or corporate person, whether public or private, including corporations, societies, associations and partnerships and bodies politic and corporate, public agencies, authorities, departments, offices and political subdivisions of the Commonwealth.

75.03 Applicability

(1) 310 CMR 75.00 applies to any person who manufactures, sells, offers for sale or distributes mercury-added products in Massachusetts on or after May 1, 2007.

(2) The following products are exempt from the requirements of 310 CMR 75.00:

(a) motor vehicles and mercury-added components in motor vehicles,
(b) refurbished medical equipment,
(c) mercury-added button cell batteries,
(d) products where the only mercury contained in the product is in one or more removable mercury-added button cell batteries,
(e) products where the only mercury contained in the product is contained in one or more mercury-added lamps,
(f) mercury-added formulated products intended to be totally consumed in use, such as reagents, cosmetics, pharmaceuticals and other laboratory chemicals,
(g) products made with coal ash,
(h) products that are incorporated into equipment used to manufacture semi-conductor devices, or

(i) elemental mercury in pre-capsulated form that is sold, distributed or provided to a dental practitioner for use in compliance with the department's regulations concerning amalgam wastewater and recycling for dental facilities.

(3) After December 28, 2007, once a mercury-added product is no longer sold, offered for sale, or distributed in Massachusetts, the product's manufacturer will no longer be subject to the requirements of 310 CMR 75.00.

(4) Compliance with 310 CMR 75.00 does not release manufacturers, distributors, wholesalers, or retailers from the need to comply with other applicable state, federal and local requirements.

(5) The Department shall deem manufacturers of mercury-added lamps to have satisfied the requirements of 310 CMR 75.04 if, individually or as a group, they develop and file with the Department an education plan in accordance with the requirements of 310 CMR 75.05 (2) and (3). If a manufacturer fails to comply with these provisions, such manufacturer shall comply with the full terms and conditions of 310 CMR 75.04.

75.04: Plans for Collecting and Recycling Mercury-Added Products

(1) No later than March 3, 2008, every manufacturer of a mercury-added product subject to 310 CMR 75.00 whose products are sold, offered for sale, or distributed in Massachusetts shall develop and file with the Department a plan for collection, storage (including containment of mercury-added products and/or components), transportation, and recycling of end-of-life mercury-added products in accordance with 310 CMR 30.000. Such plans shall provide methods of collection and recycling that are convenient and accessible to product purchasers and users.

(2) No person shall sell, offer for sale or distribute a mercury-added product to which 310 CMR 75.00 applies after March 3, 2008, unless its manufacturer files with the Department a plan as specified in 310 CMR 75.04 for collecting its mercury-added product(s) at the end of the product's useful life and recycling its mercury content, and commences implementation of such plan.

(3) Every manufacturer of mercury-added products sold or distributed in Massachusetts shall be financially responsible for developing and implementing a plan that meets the requirements of 310 CMR 75.04.

(4) Where a mercury-added component is part of another product, the collection system shall provide for collection of the mercury-added component or collection of both the mercury-added component and the product containing it.

(5) Plans for collection and recycling of mercury-added products may be submitted by a trade association or industry group on behalf of a specific group of manufacturers.

(6) Plans for collection and recycling of mercury-added products shall include, at a minimum, the following information:

(a) Applicant's name, telephone number, North American Industry Classification System, and web address. If a trade association is submitting a plan on behalf of a group of manufacturers, include trade association name, telephone number and web address, and list of participating manufacturers' names with respective contact information.

(b) Applicant's address, including the mailing address.

(c) The address, telephone number, and e-mail address of a contact person for the applicant.

(d) A description of how to advise purchasers of the mercury-added product(s) about the collection and recycling program, including the purpose of the collection and recycling program, and how they may participate. The description must identify the parties who will be responsible for implementing the purchaser education plan, and the date on which it will commence implementation. Such description shall also include, but shall not be limited to, notification to all persons who sell, distribute, or offer the mercury-added product(s) for sale in Massachusetts that the product(s) cannot be sold unless they are covered by the manufacturer's collection and recycling plan. Such notification shall be repeated on a specified basis that shall be no less frequent than annually.

(e) Location of all mercury-added components in each product covered by the Plan, and directions for removing them to aid collection (if appropriate).

(f) If applicable, documentation regarding the intention of the applicant to phase-out use of mercury in the product or the sale of the mercury-added product in Massachusetts, and the schedule for the phase-out.

(g) Identification of currently available collection and recycling methods for the mercury-added product(s) and information about the extent to which the mercury-added product(s) is currently collected and recycled at the end of its useful life.

(h) Description of the system that will be employed for collection, storage, transportation, and recycling of the mercury-added product(s), including provision for managing collected mercury-added products in accordance with 310 CMR 30.000. Such system shall be convenient and accessible for the product user. It may employ:

1. the direct return of an end-of-life product or component to the manufacturer, or its agents;
2. a drop off program where a receiving facility is no farther than a 30 minute driving distance for any Massachusetts generator of the end-of-life mercury-added product; or
3. another system that is as convenient to the product user as the original product purchase.

(i) Schedule for implementing the plan, including the date on which collection will commence. Collection shall commence no later than 45 days after submittal of the plan to the Department.

(j) Documentation of the commitment of all necessary parties to perform as intended in the planned collection and recycling program.

(k) Documentation demonstrating how the manufacturer will finance the proposed collection and recycling program. The cost of the program shall not be borne by state or local government. Financing may include the recovery of a product that has an economic value to processors, such as silver oxide batteries.
(l) The targeted recycling rate for the collection and recycling of mercury-added product(s), or components covered in the Plan, a description of the performance measures to be used to demonstrate that the collection and recycling program is meeting the target recycling rate and the recordkeeping protocol that will be implemented to demonstrate compliance with the Plan.

1. Such target recycling rate shall be expressed as a percentage, where the numerator is the number of mercury-added product(s) (or mercury-added components) expected to be collected in Massachusetts and recycled in each year of the Plan's operation, and the denominator is an estimate of the number of mercury-added products (or mercury-added components) expected to be available for collection in Massachusetts and recycling each year. The estimated number of products expected to be available for collection in any year shall be based on a rolling average life expectancy of the product (assuming normal use by the user) and sales data, and other indications of the number of products that are likely to be retired (or reach the end of their useful life) in each year.
2. For plans submitted by an individual manufacturer, the target recycling rate shall be based on that manufacturer's Massachusetts sales data and average product life expectancy. For plans submitted by a trade association or industry group on behalf of a group of manufacturers, the target recycling rate shall be based on the group's Massachusetts sales data and average product life expectancy.
3. The target recycling rate shall not be less than the rates established in Table 1:

TABLE 1
Target Recycling Rates for Mercury-added Products Generated in Massachusetts

Calendar Year	Target Recycling Rate
2008	30 percent
2009	40 percent
2010	50 percent
2011	75 percent
Each subsequent year	75 percent

4. The target recycling rate for mercury-added products first sold, offered for sale or distributed after March 3, 2008 shall be 75%, to be achieved by the end of the first full year of the product's sale or distribution in Massachusetts.

(m) Description of additional or alternative actions that will be implemented to improve the collection and recycling program and its operation in the event that the target recycling rate is not met, and

(n) Other special conditions or information related to the affected mercury-added product(s), such as special handling that will be required by product users to participate in the collection and recycling program.

(7) Submittal of Plans to the Department.

(a) Plans shall be filed with the Department in accordance with the schedule established in 310 CMR 75.04(1).

(b) Such plans shall be accompanied by the certification required by 310 CMR 75.04(9) and shall comply with the requirements of 310 CMR 70.03.

(8) Recordkeeping Requirements

(a) Manufacturers subject to 310 CMR 75.00 shall keep records on-site that demonstrate compliance with this section, and the supporting information that the manufacturer relied upon to file the plan required by 310 CMR 75.04, and may be required to submit said records upon request of the Department.

(b) Records shall be maintained for at least five years.

(9) Annual Compliance Certification

(a) Manufacturers subject to 310 CMR 75.04 shall submit a compliance certification annually to the Department. Such certification shall address compliance with the requirements of this section on a form prescribed by the Department that shall include at least the following information:

1. The type and number of each mercury-added product collected in Massachusetts and recycled;
2. The estimated number of each mercury-added product expected to be available for collection in Massachusetts for recycling in the year covered by the certification, which shall be based on a rolling average life expectancy of the product (assuming normal use by the user);
3. The number of mercury-added products the manufacturer sold, offered for sale or distribution in Massachusetts in the year covered by the certification;
4. Calculation of the actual recycling rate;
5. Certification that documentation and records are being maintained as required by 310 CMR 75.04(8);
6. Certification that the plan will continue to be implemented (identifying any changes needed to address operating issues or to ensure that the target recycling rate is met) during the coming year; and
7. The certification required by 310 CMR 70.03.

(b) Compliance certifications shall be submitted to the Department by March 31 of each year. The first compliance certification shall cover the period from the commencement of plan implementation through the first full calendar year of implementation.

75.05: Collection and Recycling of Mercury-added Lamps

(1) Manufacturers of mercury-added lamps shall satisfy the requirements of 310 CMR 75.04 if, individually or as a group, they develop and file with the Department, an education plan in accordance with 310 CMR 75.05(2) and (3).

(2) Education plans shall, at a minimum, include the following information:

(a) Economic and environmental benefits of mercury-added lamps;
(b) The ways in which mercury can harm the environment and human health;
(c) Proper disposal and recycling methods for mercury-added lamps;
(d) Where and how to return, recycle, or properly dispose of mercury added lamps; and
(e) The meaning of the chemical symbol "Hg" and other symbols and non-English terms used to present the information described in this section to consumers and municipalities.

(3) The information required in 310 CMR 75.05(2)(d) shall be provided to consumers through the use of a toll-free telephone number, internet web site(s), information labeled on the product, and either information included in the product's packaging or information otherwise accompanying the sale of mercury-added lamps.

(4) On or before March 31, 2008, each manufacturer of mercury-added lamps offered for sale or distribution in Massachusetts shall submit a report to the Department that provides information concerning mercury-added lamps that are expected to be available for recycling on an annual basis. Such report shall contain:

(a) the total number of mercury-added lamps sold by that manufacturer in Massachusetts annually in calendar years 2002 through 2007;
(b) the total number of lamps sold by that manufacturer for use in the manufacture of semiconductor devices annually in calendar years 2002 through 2007, if available;
(c) the annual difference between 310 CMR 75.05(4)(a) and (b), if available, and
(d) the average life expectancy of the mercury-added lamps sold into Massachusetts in each calendar year; and
(e) the certification required by 310 CMR 70.03.

(5) Each manufacturer of mercury-added lamps offered for sale or distribution in Massachusetts shall submit an annual compliance certification to the Department on or before March 31 of each year. Such certification shall be made on a form prescribed by the Department that contains at a minimum the following information:

(a) Certification that the manufacturer is implementing and will continue to implement a public education plan in accordance with the requirements of 310 CMR 75.05;
(b) The total number of mercury-added lamps sold by that manufacturer in Massachusetts in the previous calendar year.
(c) The number of mercury-added lamps from Massachusetts recycled in the previous calendar year;

(d) Any significant changes in the average life expectancy of the manufacturer's mercury-added lamps since the submittal of the report required by 310 CMR 75.05(4); and
(e) The certification required by 310 CMR 70.03.

(6) The certifications required by 310 CMR 75.05(4) and (5) may be filed by a trade association or other group on behalf of more than one manufacturer. If such a "group" certification is filed, it shall contain:
(a) the name of each manufacturer being represented;
(b) the information required by 310 CMR 75.05(4) and (5) for the manufacturers as a group;
(c) the annual Massachusetts sales figures for each manufacturer covered by the certification; and
(d) the certification required by 310 CMR 70.03, signed by a Responsible Official (as defined in 310 CMR 70.02) of both the group and each individual manufacturer covered by the certification.

(7) Manufacturers may request that the Department keep the information described in 310 CMR 75.05(4) confidential, in accordance with the requirements and procedures established in 310 CMR 3.00.

(8) Determining Success of Education Plans
(a) The Department will calculate the recycling rate for mercury-added lamps for each calendar year, based on the reports and certifications submitted in compliance with 310 CMR 75.05(4) – (6). The Department may consider other available information (e.g., Department audits of reports).
(b) If actual recycling of mercury-added lamps generated in Massachusetts meets or exceeds the target recycling rates established in 310 CMR 75.05 (8)(b): Table 2, then lamp manufacturers shall continue to implement the education plan(s) described in 310 CMR 75.05(2) and (3).

TABLE 2
Target Recycling Rates for Mercury-added Lamps Generated in Massachusetts

Calendar Year	Target Recycling Rate
2008	30 percent
2009	40 percent
2010	50 percent
2011	70 percent
Each subsequent year	70 percent

(c) For any year in which recycling of mercury-added lamps generated in Massachusetts is less than the target recycling rates established in 310 CMR 75.05 (8)(b), Table 2, manufacturers shall make a payment into an expendable trust fund established in accordance with MGL c. 6A, §6. Such fund shall be maintained for the purpose of providing grants to municipalities and regional authorities to

facilitate the achievement of the target recycling rates established in 310 CMR 75.05 (8)(b), Table 2.

(d) Payments to the expendable trust fund shall be made in accordance with the following formula ("% MMS" is the manufacturers' percentage of the total sale of mercury-added lamps in Massachusetts during the particular calendar year in which the target recycling rate was not achieved). At the end of 2008:

1. If the actual recycling rate is within three percentage points below the target recycling rate in any calendar year, each manufacturer's payment shall be calculated as follows: *0.25 x %MMS x $1,000,000*.
2. If the actual recycling rate is more than three percentage points but less than or equal to six percentage points below the target recycling rate in any calendar year, each manufacturer's payment shall be calculated as follows: *0.5 x %MMS x $1,000,000*.
3. If the actual recycling rate is more than six percentage points but less than or equal to nine percentage points below the target recycling rate in any calendar year, each manufacturer's payment shall be calculated as follows: *0.75 x %MMS x $1,000,000*.
4. If the actual recycling rate is more than nine percentage points below the target recycling rate in any calendar year, each manufacturer's payment shall be calculated as follows: *%MMS x $1,000,000*.

(e) At the end of calendar year 2009, the percentage increment between the payment levels in 310 CMR 75.05(8) shall be two percentage points. At the end of calendar year 2010 and in subsequent years, the percentage increment between the payment levels in 310 CMR 75.05(8) shall be one percentage point.

(f) Aggregate funding commitments by manufacturers shall not exceed $1,000,000 for any year of non-compliance with the target recycling rates established in 310 CMR 75.05(8).

(g) Manufacturers' individual contributions shall not exceed their respective market share of lamps sold in Massachusetts during the particular calendar year in which the target recycling rate was not achieved.

(h) For any year in which recycling of mercury-added lamps generated in Massachusetts is less than the target recycling rates established in 310 CMR 75.05 (8)(b): Table 2, the Department shall notify manufacturers that payments pursuant to M.G.L. Chapter 21 H Section 6J(e) are owed to the expendable trust fund described in 310 CMR 75.05(8)(c). Such notice shall:

1. Inform the manufacturers that recycling of mercury-added lamps failed to meet the target recycling rate for the specific calendar year;
2. Specify the total amount that manufacturers as a group shall pay into the expendable trust fund described in 310 CMR 75.05(8)(c); and
3. Specify the amount that the manufacturer shall pay into the expendable trust fund, as determined by 310 CMR 75.05(8)(d).

(i) Payments to the expendable trust fund shall be made within 45 days of receipt of the notice described in 310 CMR 75.05(8)(h).

(j) The Department will disburse funds from the expendable trust fund to municipalities and regional authorities through a competitive grant application process.

(k) In the event that a specific manufacturer certifies and provides to the Department the number of that manufacturer's mercury-added lamps that were recycled in a given year, the Department will use such information to calculate an actual recycling rate for that specific manufacturer. If the Department determines that the manufacturer has achieved the target recycling rate for that year, that manufacturer will not be obligated to make the payment into the expendable trust fund required by 310 CMR 75.05(8)(c) through (e) for that year. If the Department determines that the manufacturer has not achieved the target recycling rate, then the requirements of 310 CMR 75.05(8)(c) through (i) shall apply.